

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DEANNA ENGLISH,	:
	: CIVIL ACTION NO. 3:16-CV-846
Plaintiff,	:
	: (JUDGE CONABOY)
v.	:
	:
SOCIAL SECURITY ADMINISTRATION,	:
	:
Defendant.	:
	:

MEMORANDUM

Pending before the Court is Defendant's Motion to Dismiss Plaintiff's Complaint (Doc. 6). In the accompanying brief, Defendant asserts the Complaint is properly dismissed because Plaintiff has not exhausted administrative remedies regarding her administrative request for reconsideration of a determination of overpayment of supplemental security income ("SSI") benefits and, therefore, the Court is without jurisdiction to consider this matter. (Doc. 7 at 1-2.) In response to Defendant's motion and supporting brief, Plaintiff filed a document titled "Brief in Opposition to Defendant's Motion to Dismiss" which is comprised of a cover page which contains the document title and a notation, "[p]lease find the attach [sic] documents as a response," and sixty-nine pages of documents related to her Social Security case. (Doc. 10 at 1-70.) For the reasons discussed below, the Court concludes Defendant's motion is properly granted.

I. Background

Defendant sets out the following background information:

On June 6, 2013, Plaintiff was notified of an overpayment of supplemental security income benefits (SSI). See Ex. 1 of Decl of Kathie Hartt (hereinafter Hartt's Decl.). On July 31, 2013, Plaintiff filed a request for reconsideration of the June 6, 2013 determination. See Ex. 2 of Hartt's Decl. On August 13, 2013, Plaintiff filed a request for a hearing before a decision was made on the reconsideration. See Hartt's Decl. at ¶ 3(b). On September 8, 2015, the administrative law judge dismissed the request for hearing and remanded the case to the Scranton District office for further action because no reconsideration determination had been made. See Ex. 3 of Hartt's Decl.

On April 29, 2016, the Appeals Council denied Plaintiff's request for review of the administrative law judge's dismissal and forwarded the case to Plaintiff's local office for a reconsideration determination on the overpayment in question. See Ex. 4 of Hartt's Decl. The Appeals Council notice did not provide for further appeal of the dismissal made by the administrative judge. *Id.*

On May 11, 2016, instead of receiving a decision on the overpayment and exhausting administrative remedies, as the statutes require, Plaintiff instituted a civil action in this Court (Docket No. 1).

(Doc. 7 at 1-2.)

II. Discussion

Based on the procedural background set out above, Defendant maintains that this Court is without subject matter jurisdiction "[b]ecause there has been no decision from the Agency regarding the request for reconsideration, Plaintiff has not exhausted administrative remedies, and there has not been 'final decision

after a hearing' in this case pursuant to the Social Security Act." (Doc. 7 at 2.) Plaintiff provides no substantive response to this assertion.¹ (See Doc. 10.)

Judicial review of administrative matters is governed by statute and regulation and is subject to the general rule that parties must exhaust agency administrative remedies before seeking relief in federal court. See *McCarthy v. Madigan*, 503 U.S. 140, 144-45 (1992). 42 U.S.C. § 405(g) addresses judicial review of Social Security decisions and states in relevant part that

[a]ny individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days

¹ Considering Plaintiff's responsive filing (Doc. 10) under the liberal standard required for *pro se* filings by *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the Court concludes that Plaintiff's response, which is devoid of argument or assertion, cannot be deemed a brief opposing Defendant's motion. Therefore, pursuant to Local Rule 7.6 of the Rules of Court of the Middle District of Pennsylvania, Plaintiff is deemed not to oppose the motion. However, before dismissing a case based on failure to comply with a local rule, the Third Circuit Court of Appeals has directed that the Court should consider the factors set out in *Poulis v. State Farm Fire & Casualty Company*, 747 F.2d 863, 868 (3d Cir. 1984), see, e.g., *Comodyne I, Inc. v. Corbin*, 908 F.2d 1142, 1148 (3d Cir. 1990); see also *Xenos v. Hawbecker*, 441 F. App'x 128, 131 (3d Cir. 2011) (not precedential). The *Poulis* factors are (1) the extent of the party's personal responsibility; (2) prejudice to the adversary; (3) any history of dilatoriness; (4) whether the party acted willfully or in bad faith; (5) the availability of alternative sanctions; and (6) the meritoriousness of the claim or defense. *Poulis*, 747 F.2d at 868. Because Defendant's argument is jurisdictional, it should be addressed as a threshold matter and the court will not first engage in an analysis of relevant *Poulis* factors.

after the mailing to him of notice of such decision or within such further time as the Commission of Social Security may allow.

42 U.S.C. § 405(g). Section 405(h) makes clear that this is the exclusive basis for judicial review of Social Security cases with the proviso that "[n]o findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided." 42 U.S.C. § 504(h).

The definition of "final decision" which follows a hearing and triggers the availability of federal review is set out in 20 C.F.R. § 416.1400(a), and includes the claimant's obligation to pursue administrative appeal rights in accordance with the regulations, 20 C.F.R. § 416.1405, .1421, .1455, .1481. Section 422.210 specifically states that

[a] claimant may obtain judicial review of a decision by an administrative law judge if the Appeals Council has denied the claimant's request for review, or of a decision by the Appeals Council when that is the final decision of the Commissioner. A claimant may also obtain judicial review of a reconsidered determination, of a decision of an administrative law judge, where, under the expedited appeals procedure, further administrative review is waived by agreement under §§ 404.926, 410.629d, or 416.1426 of this chapter or 42 C.F.R. 405.718a-e as appropriate.

20 C.F.R. 422.210(a).

Defendant argues that "[s]ince Plaintiff has not received a decision on her request for reconsideration, Plaintiff has not

received a final decision after a hearing and therefore, has not exhausted administrative remedies and obtained a judicially reviewable 'final decision after a hearing.'" (Doc. 7 at 5 (citing 20 C.F.R. § 416.1400(5)).) On this basis, Defendant maintains that the Complaint should be dismissed for lack of jurisdiction because Plaintiff has not exhausted the administrative process. (*Id.*)

Defendant has presented evidence supporting the administrative procedural posture of this case. (Doc. 7-1.) Plaintiff has presented no argument or evidence that she has exhausted the administrative process. (See Doc. 10.) Materials submitted by Plaintiff include the April 29, 2016, Notice of Appeals Council Action in which the Council indicates it is forwarding the case to Plaintiff's "local office for a reconsideration determination on the overpayment in question." (Doc. 10 at 32-33.) Clearly this is not a final decision of the Agency which would allow judicial review. Though the Court is sympathetic to the complicated scheme governing Social Security cases and the length of time it often takes to move through the required process, both Plaintiff and the Court must act within the relevant legal framework and this case cannot proceed in the absence of jurisdiction. Because the Agency has not reached a final decision in the overpayment matter raised by Plaintiff, the Court must conclude that Defendant correctly argues that the case must be dismissed for lack of subject matter

jurisdiction.

III. Conclusion

For the reasons discussed above, Defendant's Motion to Dismiss Plaintiff's Complaint (Doc. 6) is granted and this case is dismissed. An appropriate Order is filed simultaneously with this Memorandum.

S/Richard P. Conaboy
RICHARD P. CONABOY
United States District Judge

DATED: October 17, 2016